COURT, U. S.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1975

75-289

THEODORE E. SCHULZ, Plaintiff, Appellant vs. GEORGE CRESS ET AL., Defendants, Respondents	Superior Court Civil 52243 COMPLAINT FOR RECOVERY OF PUBLIC FUNDS Court of Appeal 1/Civil 35533

Petition For A Writ of Certiorari
To the California Court of Appeal,
First District, Fourth Division

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1975

THEODORE E. SCHULZ,

Petitioner,

vs.

GEORGE CRESS ET AL.,

Respondents.

Petition For a Writ of Certiorari
To The California Court of Appeal,
First District, Fourth Division

Theodore E. Schulz, Petitioner pro se, prays that a writ of certiorari issue to review the opinion of the Court of Appeal of the State of California, First District, Division Four, filed March 14, 1975, and amended April 7, 1975, sustaining judgment of Superior Court in and for Santa Cruz County, California (rendered April 26, 1974), dismissing action of plaintiff (petitioner herein). Times of entry of judgment not recorded.

OPINION BELOW

The opinions of the lower courts are set forth in full in Appendix A, infra.

JURISDICTION

The jurisdiction of the high court is invoked on these grounds: That Court of Appeal, like the court below, rendered judgment/opinion on the basis of ignorance and misapprehension of the facts of the case and upon false conclusions, surmises and unreasonable inferences and irrelevancies. Justice was not done by the lower courts and petitioner was deprived of "his day in court."

There are three judgments or decrees sought to be reviewed, presented here in reverse chronological order: 1. Supreme Court denial of hearing, dated May 8, 1975, which "denotes finality of judgment" and left petitioner with no further recourse in California. 2. Opinion of Court of Appeal, March 14, 1975, and amended April 7, 1975, affirming judgment of Superior Court dismissing action of plaintiff, April 26, 1974. (No time of entry on any judgment.)

Dates of orders respecting rehearing or reconsideration: Superior Court order denying motion for reconsideration, March 5, 1974; Superior Court order summarily denying motion to vacate judgment, May 16, 1974; amended opinion denying "petition for rehearing," April 7, 1975; undated, informal note from clerk of appellate court falsely stating that court "has lost jurisdiction," sent after appellant had submitted timely "motion for

reconsideration" dated April 13, 1975; letters of June 2 and 9, 1975, rejecting proper and timely-filed "motion for reconsideration," from clerk of California Supreme Court.

The statutory provisions believed by petitioner to confer jurisdiction on Supreme Court to review by certiorari are: Rule 19, 1(b), which confers jurisdiction "when the court below has so far departed from the accepted and usual judicial proceedings, or has so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision;" and the fifth and fourteenth amendments to the U.S. Constitution, which forbid any state "to deprive any person of . . . property without due process of law."

QUESTIONS FOR REVIEW

1. May the courts permit defendant officers of Santa Cruz County to waive constitutional and statutory provisions bearing upon their official acts?

> "The U.S. Supreme Court has repeatedly asserted that all officers of government from the highest to the lowest are creatures of the law and bound to obey it." – Burton v. U.S., 202 US 344.

2. May the courts allow these officers to employ Government Code section 29302 as an alternative to section 25904?
3. May the courts below require plaintiff/appellant to submit proof of unlawful conduct and fraudulence of documents

before trial of the facts alleged as causes of action, that is, during hearings on demurrers to complaints?

> "Every material allegation of the complaint . . . not controverted by the answer, shall, for the purposes of the action, be taken as true." – Code of Civil Procedure, sec. 431.20(a).

4. May Superior Court allow defendant County Counsel to refuse to perform his statutorily imposed duty without stating in its opinion why "the circumstances set forth in this complaint" relieve that officer of the duty?

5. May the court permit County Administrative Officer to perjure himself in attesting, on a claim against County treasury, that a certain expenditure was necessary; may it permit him to ignore that statute which makes unlawful the advocacy of the claims of another; may it permit him to execute (sign) a fraudulent agreement even though supervisors have approved it?

6. In view of the manner in which the disputed sum of $15,000 was budgeted, allocated and paid out, was it a gift of public funds prohibited by the Constitution of the state?

7. May the appellate court ignore the errors, abuse of discretion and prejudice of the court below, substitute fanciful statements and opinions for the clear and sober allegations of plaintiff and on the basis of such insupportable statements and

opinions affirm the voidable judgment of Superior Court?

8. May the courts dismiss a complaint that has more than twenty clearly stated and uncontested allegations, without bringing the allegations to trial?

> "If any cause of action is sufficiently pleaded in a complaint, a judgment of dismissal cannot be sustained." – Dalzell v. Kelley (1951) 104 C.A. 2nd 66.

CONSTITUTIONAL, STATUTORY PROVISIONS

Constitutional provisions and statutes which the case involves are here cited, with texts quoted in Appendix B, infra.

1. U.S. Constitution, 5th amendment, cited on page 7 of Clerk's Transcript on appeal. N. B.: It now appears that the better reference would have been the 14th amendment – TES; 14th amendment, not cited in record but here called to aid.
2. California Constitution Art. XIII, sec. 25 (XVI, 6 in current version) cited on page 7 of transcript.
3. California Government Code sections: 23006, cited on page 33 of transcript; 25904, cited on pp. 7, 30-D, 33 and 36 and quoted in full on p. 5; 26525, p. 39; 26526, 26529, 27642, p. 3; 29005, 29010, 29021(i) and 29040, cited pp. 7 and 33 and quoted in pertinent part, p. 21; 29302, cited and set out verbatim p. 30-F; 29708, cited p. 35, quoted p. 21.

STATEMENT OF THE CASE

In 1971 the supervisors and other officers of Santa Cruz

County budgeted, allocated and paid to the 14th District Agricultural Assoc. and to a group of private persons calling themselves the Council on the Environment two sums of money from the general fund of the County, namely, $13,000 and $2,000 respectively. The budgeting, allocating and paying were all without warrant of law, the officers having illegally waived statutory and constitutional provisions. The moneys were illegal gifts of public funds. They were used for purposes not allowed by applicable law.

The accused officers failed to levy a special tax to create a fund from which contributions to a local fair could have been made lawfully; they failed and refused to follow Gov. Code sec. 25904, the only statute providing the needed authority.

Petitioner herein then filed an action in Superior Court as a resident taxpayer in the name of the County, seeking recovery of funds unlawfully disbursed.

In his complaints, he set out more than twenty precisely worded allegations as causes of action and named each of nine officers as the proximate cause of loss to plaintiff and to County of $15,000.

Demurrers took no cognizance of allegations in complaints or slyly misrepresented the issues. Defendants concede that section 25904 was not followed. They chose to "rely on" another permissive Gov. Code section, 29302, which allows counties to place in the

general fund moneys derived from taxes "levied at one uniform rate on all the taxable property in the county for the purpose of creating, replenishing or contributing to a fund for a particular and specified purpose" and allows the supervisors to "add the tax rate for such a fund to the general tax rate for the purpose of simplifying the accounting . . . " No tax rate for fair purposes was set, no special tax was levied, no fund existed or was created. In consequence of the omissions section 29302 provided no authority for the acts of defendants complained of. Superior Court correctly states that the "Supervisors simply allocated $15,000 out of the general fund to the County Fair . . . " and held that this was "one alternative (to using 25904 – TES) expressly sanctioned by law . . . "

Hurried hearings on demurrers to complaints were held, with no reporter present, during which the court displayed prejudice in favor of defendants and their attorney. Plaintiff was not permitted to answer false and misleading statements of opposing counsel. Hearings were abruptly terminated. Plaintiff was not properly heard, was not allowed his "day in court." On April 26, 1974, the court denied motion for reconsideration filed Mar. 15, 1974, dismissed the action on April 15, 1974, and on May 16, 1974, refused to grant motion to vacate judgment.

Plaintiff appealed to District Court of Appeal. This

court advised litigants that waiver of oral argument would hasten a decision, and waiver was made. Then the court rendered a decision which, like the orders of the lower court, was filled with false and fanciful statements, irrelevancies and misrepresentations of allegations in complaints. Court showed itself unwilling to have its misapprehensions corrected. Its opinion affirmed judgment of Superior Court.

Appeal was then made to Supreme Court of California, which denied a hearing, thereby violating its own rule No. 29 which says, in part: "A hearing in the Supreme Court after decision by a Court of Appeal will be ordered (1) where it appears necessary to secure uniformity of decision or the settlement of important questions of law," and that provision of the state Constitution which states, inter alia, that decisions of the Supreme Court . . . that determine causes shall be in writing with reasons stated" (Art. VI, sec. 14).

In all three courts petitioner was denied equal protection of the laws.

FEDERAL QUESTIONS

The federal question of "due process of law" was raised in complaint (p. 7 of transcript) in this manner: "Said approval and allocation were further unlawful in that they were in violation of Amendment V of the Constitution of the United States, depriving

the sovereign people of the State of California and particularly the people of the County of Santa Cruz of a portion of their collective property, namely, certain tax moneys reposing in the General Fund of that County, without due process of law."

There was no opportunity given in Superior Court to raise the "equal protection" issue as such, but plaintiff challenged by letter and formal objections the court's denial of his right to amend his complaint "after demurrer and before trial of the issue of law thereon . . . " as granted by Code of Civil Procedure section 472, and he similarly challenged the court's conduct of hearings on demurrers, to no avail.

The courts both ignored the (federal and state) constitutional questions, as they did almost all of plaintiff's uncontested allegations.

AMPLIFYING ARGUMENT

The supervisors and other defendant officers have hidden their unlawful conduct behind numerous superficial and biased "made-to-order opinions" of county counsel. Their conduct must be subjected to competent and honest examination as a deterrent to future unlawful acts.

The public interest would be served if the high court ruled on the applicability of the two permissive (enabling) sections of the Government Code chiefly at issue here (25904 and 29302)

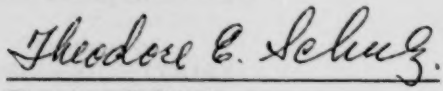
to the authority of the supervisors of the several counties of this state. This has never been done. These sections have never previously been before a court of law or even the attorney general for his opinion. The three courts complained of herein have sidestepped the issues involved.

It is in the public interest that the courts of California be required to perform their statutory function as courts of justice. If the treatment accorded this litigant by the courts is typical, the rights of the people of this state are not secure. If justice is to be done in the present case, petitioner must have the opportunity to present facts and documents to offset misapprehensions of the lower courts.

It is imperative that the stare decisis of the state Supreme Court defining "substantial justice" as "substantial legal justice," to be ascertained and determined by fixed rules and positive statutes . . . " be followed by our courts today and in future. (See Stevens v. Ross (1950) 1 Cal. at p. 98.) The indifference of the three courts to exactness, legal niceties and the goal of uniformity of decision is frightening.

For all the foregoing reasons, the Supreme Court is earnestly requested to review the present case by certiorari. (cont.)

Respectfully submitted,



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APPENDIX A
(Opinions of Superior Court)

Chambers of
THE SUPERIOR COURT
Santa Cruz, California

February 15, 1974

Office of the County Counsel
Santa Cruz County
701 Ocean Street
Santa Cruz, California 95060

Attention: Mr. Howard E. Gawthrop

Mr. Theodore E. Schulz
1945 Cox Road
Aptos, California 95003

Re: Schulz et al. vs. Cress, et al.
Case No. 52243

Gentlemen:

1. The demurrer of the defendants Gawthrop and Millar will be sustained without leave to amend. No personal liability attaches to a public employee for signing a contract at the direction of the Board of Supervisors, nor does personal liability attach to county counsel for failing to bring an action under the circumstances set forth in this complaint.

2. As to all other defendants, the general demurrer will be sustained with leave to amend. Plaintiff will be given twenty (20) days within which to file an amended pleading stating facts showing that the governmental conduct complained of was in fact illegal and

that the conduct resulted in injury to him or to any taxpayer.

Yours truly

Harry F. Brauer

- - - - - - - -

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CRUZ

THEODORE E. SCHULZ, individually and on behalf of the County of Santa Cruz, Plaintiff, vs. GEORGE CRESS, et al., Defendants	)	No. 52243 ORDER SUSTAINING DEMURRER WITHOUT LEAVE TO AMEND AND FOR JUDGMENT

This is a class action, against the persons who were members of the Santa Cruz County Board of Supervisors in 1971 and against elected and appointed County officials (and against the executrix of the estate of a deceased official) who had some connection with the events giving rise to this suit. A demurrer was sustained to the original complaint, without leave to amend as to two appointed officials, and with leave as to the remaining defendants. The matter is now before the Court for ruling on the demurrer to the first amended complaint. As the basic facts giving rise to this claim

are not in dispute, this case lends itself well to resolution upon demurrer.

Those facts are the following: In 1971 the County Board of Supervisors voted to contribute $15,000.00 to the Fourth District Agricultural Association for the support of the County Fair, $2,000.00 of which was to be earmarked for an environmental-ecological display prepared by the Council on the Environment, a private organization. The $2,000.00 was to be released to the Council upon approval of the exhibit by the Directors of the County Fair Board. It is plaintiff's basic contention that no contribution could legally be made to the Agricultural Association except by levying a special tax pursuant to Government Code Section 25904 and that in no event could the County legally make a contribution to a private organization such as the Council for the Environment.

Government Code section 25904 reads as follows:

[Quotation of code section will be found in Appendix C, p. 26 infra – TES.]

The defendants, however, rely on Government Code Section 29302 which provides as follows:

[Please see Appendix C, p. 27 infra, for text of code section – TES.]

The exhibits attached to the complaint make clear that the procedure set forth in Section 29302 was in fact followed;

the Supervisors simply allocated $15,000.00 out of the general fund to the County Fair of which $2,000.00 was to go to the Council for the Environment.

In 1957, section 25904 was amended to delete the requirement that a special tax may be levied only by a 2/3 vote of the Board of Supervisors. Since that time, it has taken no greater vote to levy a special tax than to approve a County budget. No contention has been made or can be made that the $15,000.00 here in question exceeded four cents on each $100.00 of taxable property; indeed, the amount of the contribution was approximately ten percent of the maximum allowed by statute. The procedure employed by the Board of Supervisors complied with one alternative expressly sanctioned by law; and no taxpayer can claim to have been damaged by utilization of one rather than the other method used in raising and expending the funds.

With reference to the $2,000.00, it seems clear to me that if the Supervisors have the power to contribute $15,000.00 to the County Fair, they may attach such strings as they see fit consistent with their duty to promote the public welfare. The protection of our environment is and was in 1971 the strongly declared public policy of this state, Public Resources Code Sections 21000 and 21001. Counties are legal subdivisions of the State, California Constitution Article XI, Section 1. It cannot be doubted

that a County pursues a legitimate public policy when it subsidizes an ecological exhibit at the Fair, subject only to the monetary limitation set forth in section 25904.

The first amended complaint refers to certain documents and conduct as fraudulent. No facts are alleged to support those naked conclusions and the plaintiff seems to use the word "fraudulent" as a synonym for "unlawful." If no facts are set forth in two complaints supporting the conclusion of fraud, it may be surmised that none can be so alleged. That the Supervisors declined to accept plaintiff's legal opinion as to the legality of the contribution to the Fair hardly buttresses the contention that the Supervisors knew that their action was illegal, especially where plaintiff's opinion differed from that rendered by the County Counsel and from that now adopted by the Court. In any event, the use of the word "fraudulent" adds nothing to the viability of the claim. Motive alone does not taint conduct otherwise legal. Monahan v. Department of Water and Power, 48 C.A. 2nd 746, 754 (1941).

The demurrer will be sustained without leave to amend. County Counsel is directed to prepare a judgment of dismissal.

Dated: April 15, 1974.

(Signature illegible)
Judge of the Superior Court

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CRUZ

THEODORE E. SCHULZ, individually and on behalf of the County of Santa Cruz, Plaintiff, vs. GEORGE CRESS, et al., Defendants.	No. 52243 JUDGMENT

The general demurrers of all defendants having been sustained without leave to amend, it is ordered that this action be and hereby is dismissed.

DATED: April 26, 1974

(Signature illegible)
Judge of the Superior Court

APPENDIX B
(Opinion of the Court of Appeal)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION FOUR

THEODORE E. SCHULZ, individually and on behalf of the County of Santa Cruz,

Plaintiff and Appellant

vs.

GEORGE CRESS, et al.,

Defendants and Respondents

Filed Mar. 14, 1975

1/Civil 35533

(Superior Court No. 52243)

Theodore E. Schulz appeals from a judgment of dismissal entered after the court sustained, without leave to amend further, his amended complaint seeking restitution from several county officers, named as defendants, who allegedly participated in an unlawful expenditure of public funds.

The factual allegations in the amended complaint are summarized:

Appellant contends that defendants, members of the Santa Cruz County Board of Supervisors, the County Auditor-Controller, Treasurer, County Counsel and Administrative officer, acted negligently and unlawfully in performing various acts relating to a county subvention of $15,000.00 to the Fourteenth District

Agricultural Association for the 1971-72 fiscal year. The agricultural association is a public entity created pursuant to Agriculture Code section 3951. (See People vs. San Joaquin Valley Agricultural Assn. (1907) 151 Cal. 797.) Of the $15,000 contribution for the association's Santa Cruz county fair, $2,000 was "earmarked" by the supervisors to be paid to a private entity, the Council on the Environment, to be used in producing for the fair an exhibit on environmental matters. The $2,000 grant was conditioned upon approval of the council's exhibit by the fair board. Appellant's claim for restitution of the entire $15,000 from each defendant was based on the contention that they each acted negligently or fraudulently in making an unlawful contribution.

Appellant contends that the contribution violated Government Code section 25904. [The code section is quoted as a footnote. Please see Appendix C, p. 26 infra, for text. – TES] That statute empowers the board of supervisors to levy a special tax in order to make contributions to any local fair maintained by, among other entities, county agricultural associations. Appellant argues that the statute was violated in that no special tax was levied and no fund was created for the contribution. Respondents reply that Government Code section 29302 [Text quoted as a footnote and appears in Appendix C, p. 27 infra. – TES.] authorizes the board of supervisors to add the special tax rate allowed under section 25904 to the general

tax rate and to make the contribution from the resulting general fund, rather than from a special fund. The purpose of the consolidation statute is to simplify accounting. The only requirement the statute places on qualification for consolidation is that the tax to be consolidated is required or permitted to be levied at one uniform rate on all taxable property in the county for the purpose of replenishing or contributing to a fund for particular and specified purposes. Section 25904 provides for a uniform rate of up to four cents on each $100 of taxable property in the county for the purpose of creating a fund for the specified purposes. The tax and fund provided for by section 25904 qualifies for consolidation within the requirements of the statute. The contribution did not violate section 25904.

Appellant also contends that because the Council on the Environment was not a "public agency, county agricultural association, county fair association or chamber of commerce," the contribution of $2,000 earmarked for its use violated section 25904.

All documents in the record indicate that the board of supervisors allocated $15,000 to the agricultural district and only conditionally "earmarked" $2,000 for use by the council if its exhibit were found satisfactory. The record clearly supports the inference that some contractual arrangement was made between the district and council whereby the council would receive the

funds if its services were found satisfactory; there is nothing of record to rebut this inference. As a payment for services rendered by the council, the payment to the council was no different than expenditures made by the district for goods and other services purchased by it in the course of conducting the fair.

The fact that the council received payment of the $2,000 directly from the country treasury and not from the district did not necessarily indicate that the board made a "contribution" to the council in conflict with California Constitution, article XIII, section 25. Once the allocation was made to the district, the district could assign portions of its allocation to creditors who had provided goods or other services to the district for the fair. These assignees could then file directly with the county for payment of their claims against the district, provided that the claimed amounts did not exceed the district's total allocation. That such an assignment may have been made to the council in this case is suggested by the certification on the council's claim by Sam Spina, the secretary-manager of the 14th Agricultural District. The court could reasonably have inferred that his signature on the claim indicated that the council's exhibit had been found satisfactory by the district and that the $2,000 portion of the district's allocation was being assigned to the council. Such a finding would be corroborated by the fact that the district's claim, signed by Sam Spina as claimant, was for $13,000, exactly

$2,000 less than the district's allocation.

Appellant contends that the board of supervisors unlawfully delegated their decision making power to the agricultural association to determine whether the council exhibit was satisfactory. He relies on Stowe v. Maxey (1927) 84 Cal. App. 532. In Stowe, the auditor of San Joaquin County was restrained from drawing a warrant to reimburse the San Joaquin County Fair Association for expenditures made by it in conducting a county fair. But in that case, the board of supervisors had allowed the claim by the association only after the association had made all the expenditures. (84 Cal. App. at p. 543.) The court's holding, that the board had abused its discretion, was based upon the fact that the board had not authorized the expenditures before they were made, but rather attempted to reimburse past expenditures. Here the board exercised its discretion by determining how much money should be contributed for the fair and conditioning the use of a portion of it; the board did not attempt to authorize expenditures after they had been made.

Appellant contends that the "documents used to open the treasury of the county to Ag. Assoc. and Council were on their face invalid, fraudulent and constituting no charge against the county or authority for the disbursement of county funds." In support of this contention he cites several cases holding that

warrants drawn to make improper disbursements create no legal liability. These cases are of no help to appellant; there was no effective allegation that documents were deficient in any manner.

The judgment is affirmed.

Christian, J.

We concur:

Caldecott, P. J.

Rattigan, J.

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION FOUR

THEODORE E. SCHULZ, individually and on behalf of the County of Santa Cruz,

Plaintiff and Appellant

vs.

GEORGE CRESS, et al.,

Defendants and Respondents

Filed April 7, 1975

1/Civil 35533

(Superior Court No. 52243)

THE COURT:

The written opinion filed March 14, 1975, is amended as follows:

On page one, the third sentence should read: "a demurrer to his amended complaint seeking restitution from several county".

On page six, sixth line, delete the words "warrants" and "make" and substitute "claims" and "obtain." The line will read: "holding that claims drawn to obtain improper disbursements".

The petition for rehearing is denied.

CALDECOTT, P. J.
Presiding Justice

Dated: Apr 7 1975

APPENDIX C

(Constitutional, Statutory Provisions)

Following are the texts of constitutional provisions and statutes waived by defendants in this action, the latter all from the Government Code of California, arranged numerically.

In its proper numerical place is section 29302, relied upon by defendants as an alternate to 25904.

Amendment V, US Constitution:

> " . . . nor shall any person . . . be deprived of life, liberty, or property, without due process of law; . . . "

Amendment XIV of US Constitution:

> " . . . nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

California State Constitution, Art. XVI, sec. 6 (formerly XIII, 25);

> " . . . nor shall [the Legislature] have the power to make any gift, of any public money or thing of value to any individual, municipal or other corporation whatever; . . . "

California Government Code sections:

> 23006. "Any contract authorization, allowance, payment, or liability to pay, made or attempted to be made in violation of law, is void, and shall not be the foundation or basis

of a claim against the treasury of any county."

25904. "The board of supervisors may levy a special tax, not to exceed four cents ($.04) on each one hundred dollars ($100) of taxable property, on the taxable property within the county for the purpose of creating a fund to encourage immigration, increase trade in the products of the state and of the county, and promote the industrial, livestock, agricultural, horticultural, viticultural, and pastoral pursuits of the county.

"The fund may be used for the purpose of:

"(a) Collecting, preparing, and maintaining an exhibition of the products and industries of the county at any domestic or foreign exposition.

"(b) Making contribution to the support of any local fair or exhibition of industrial, agricultural, horticultural, viticultural, or pastoral products maintained by any public agency, county agricultural association, county fair association, or chamber of commerce in the county. If there is no such fair or exhibition in the county, the contribution may be made to the support of a fair or exhibition maintained by a group of counties of which the contributing county is one.

"The contribution may be used by the agency for the general conduct of the fair or exhibition, including the giving of premiums, in the name of the county, for competitive excellence in industrial, agricultural, livestock, horticultural, viticultural, and pastoral products at the fair or exhibition."

26525. "If the board of supervisors without authority of law orders any amount paid as salary, fees, or for any other purpose, and the money is actually paid, or if any county officer draws any warrant . . . without authorization by the board of law and the warrant is paid, the district attorney shall institute suit in the name of the county to recover the money paid, and 20 percent damages for the use thereof . . ."

26526. "The district attorney is the legal adviser of the board of supervisors. He shall attend its meeting, when required, and shall attend and oppose all claims and accounts against the county he deems unjust and illegal."

26529. "In counties which have a county counsel, the county counsel shall discharge all the duties vested in the district attorney by sections 26520, 26522, 26523 and 26524 . . . "

27642. "Whenever the board of supervisors appoints a county counsel pursuant to this chapter, he shall discharge all the duties vested by law in the district attorney other than those of public prosecutor."

29005. " 'Fund' means a sum of money or other resources segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions or limitations, and constituting an independent fiscal and accounting entity."

29010. " 'Budget document' means the instrument used to present the plan of financial operations of the county and of the special districts whose affairs and finances are under the supervision and control of the board . . . "

29021 (i). "Expenditures for each budget unit, which shall be classified to set forth the data by the fund or funds from which financed . . . " [is required by this section].

29040. "On or before June 10 of each year . . . each official or person in charge of any budget unit shall file with the auditor an itemized estimate of anticipated revenues and proposed expenditures . . . "

29302. "If by law a tax is required or permitted to be levied at one uniform rate on all the taxable property in the county for the purpose of creating, replenishing or contributing to a fund for particular and specified purposes, the board of supervisors may add the tax rate for such fund to the general fund tax rate for the purpose of simplifying the accounting, and the expenditures authorized to be paid from the special fund may be paid from the general fund by appropriation therefrom. The total appropriated from the general fund for the expenditures authorized to be paid from the special fund shall not exceed the total which would have been received if the special tax had been levied and collected separately.

"Any money from sources other than taxation required by law to be deposited in the special fund shall be deposited

in the general fund and appropriated for the purposes for which expenditures are required to be made from the particular fund. Any appropriation made from the general fund shall not be less than the amount required to be provided in the special fund and shall be used only for the particular purposes for which the special fund is required to be used."

29708. "Except for his own service, no county officer or employee may present any claim for allowance against the county. No county officer or employe may in any way, advocate the relief asked in a claim made by any other person."

(End appendix)

AFFIDAVIT OF SERVICE

This is to certify that a copy of the foregoing reprinted Petition for a Writ of Certiorari to the California Court of Appeal, First District, Fourth Division was this date served on the attorney of record for Respondents, Judge of Superior Court, Clerk of Court of Appeal and Clerk of California Supreme Court, pursuant to Rule 33(1) and (3c) of the Rules of the Supreme Court of the United States, by depositing one (1) copy of same in the United States Mail, postage prepaid, addressed to:

Mr. Dwight L. Herr,
Counsel for Defendants, Respondents
701 Ocean Street
Santa Cruz, CA 95060

Hon. Harry Brauer, Judge
Superior Court, Santa Cruz County
701 Ocean Street
Santa Cruz, CA 95060

Clerk of Court of Appeal
First District, Fourth Division
4154 State Bldg.,
San Francisco, CA 94102

Clerk of California Supreme Court
4250 State Bldg.,
San Francisco, CA 94102

Signed under penalty of perjury at Aptos, CA, this 19th day of August, 1975.

Theodore E. Schulz
Petitioner pro se
1945 Cox Road
Aptos, CA 95003
(408) 722-7723

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MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE ~~UNITED STATES~~

October term, 1975

Case No. 75 - 289

	Superior Court Civil 52243
THEODORE E. SCHULZ	
Plaintiff, Petitioner,	COMPLAINT FOR RECOVERY OF
vs.	PUBLIC FUNDS
GEORGE CRESS ET AL.,	
	Court of Appeal
Defendants, Respondents	1/Civil 35533

Petition for rehearing
of order of Oct. 20, 1975
on petition for writ of
certiorari to California
Court of Appeal, First
District, Fourth Division

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75 - 289

THEODORE E. SCHULZ
Petitioner,

vs.

GEORGE CRESS ET AL.,
Respondents

Petition for rehearing of order (Oct. 20, 1975) on petition for writ of certiorari to California Court of Appeal, First District, Fourth Division.

By authority of Rule of Court No. 58, 2, Theodore E. Schulz, acting pro se, respectfully petitions the Supreme Court for a rehearing of order of October 20, 1975, denying writ of certiorari.

First, petitioner sets forth circumstances of substantial and controlling effect that have intervened between him and granting of writ:

THIS COURT HAS OVERLOOKED ESSENTIALS

The Honorable Court is asked to note that respondents have assented to granting of writ by failure to enter objections thereto. All facts and the law favor petitioner's view that writ should issue.

The Honorable Court has apparently taken no cognizance of

the compelling questions for review set out on pages 3, 4 and 5 of original petition and of the undisputed and indisputable facts recited as "Statement of the Case" on pp. 5-8.

There is no indication that Honorable Court has called up the record for examination. Without the record, with its voluminous exhibits in support of allegations, the Court cannot properly evaluate statements in petition for writ.

RIGHT TO HEARING OF CAUSE HAS BEEN DENIED

Briefly and generally: The courts of California have brushed aside principles of justice and equity and those statutes and the law as developed by the courts respecting the weight that must be given to allegations properly pleaded and uncontroverted in answers and have refused to allow plaintiff's cause to be heard. (CCP 431.20(a) and 430.80; Dalzell v. Kelley (1951) 140 C.A. 2nd 66.) Petitioner has been denied his day in court.

There has been substantial interference by Court of Appeal with the administration of justice, this court having reached its decision to sustain judgment of dismissal on the basis of misapprehension of facts and misunderstanding of applicable law.

CALIFORNIA LAW CONTROLLING

The Honorable Justices are respectfully reminded that "Where state law controls, federal courts . . . must ascertain and apply state law." – 36 CJS 327, 329.

It is an established principle that "Any law of the state which would substantially affect the outcome of a lawsuit must be re-

garded as substantive and must be followed by the federal courts." – 36 CJS 616.

It has been held that "A party's rights are substantive; the manner in which he gets them are procedural." -- Boyd v. Bell, D.C.N.Y., 64 F. Supp. 22, quoted in 35A CJS 37. This court has the power and, petitioner believes, the duty to carry out procedures that will assure petitioner and the people of Santa Cruz County their rights under California law.

CALIFORNIA LAW HAS BEEN VIOLATED

In petition of Aug. 19, 1975, petitioner asked: "May the courts permit defendent officers of Santa Cruz County to waive statuatory provisions bearing upon their official acts?" (p. 3.) He now avers as a substantial fact that the laws of California were violated, ignored, circumvented, waived by defendants in petitioner's Superior Court action. But the High Court has ruled (Burton v. US, 202 US 344) that "all officers of government . . . are creatures of the law and bound to obey it." Allegation of waiver has never been challenged.

It is also averred that, as the result of this waiving of laws, the sovereign people of the state, as represented by petitioner and other taxpayers of Santa Cruz County, were deprived of their property (taxes paid into County treasury) without due process of law.

GOVERNMENT CODE SECTION 25904 DETERMINATIVE

There is but one California statute which permits the making of a contribution from a County treasury to a fair like that staged by 14th Dist. Ag. Assoc. This is Gov. Code sec. 25904 (set out in full

on page 26 of petition).

Failure of defendant officers to follow 25904 and their admission that it was not followed are recited on p. 6. In view of the fact that neither the Attorney General nor the courts of the state have issued rulings concerning the necessity of following 25904, petitioner must quote the "next best" authority on the subject, the Legislative Counsel of the Legislature, who says:

> "In our opinion Santa Cruz County may make contributions to the 14th District Agricultural Association for the latter's use in conducting a local fair so long as the statutory procedure is observed . . .
> "The only authorization for a county to expend funds for fair purposes is section 25904, and this section provides that the contributions to be made for fair purposes are to come from the special tax authorized by the section . . .
> ". . . we are of the opinion that Santa Cruz County may make contributions to the . . . Association from a fund established pursuant to Section 25904 of the Government Code but not otherwise." – Mr. George Murphy, Sacramento, Cal., Aug. 28, 1972 (emphasis added – TES).

The Honorable Court is earnestly requested to note that opinion of Legislative Counsel refers to the special tax authorized by 25904 and to a fund established pursuant to 25904. Both of these references are of utmost importance. These two provisions of the section are definitive and controlling as to whether a County may make contributions to a fair. The courts below have overlooked the clear, condition-setting language of the determinative statute.

Judge of Superior Court truly said in his judgment: "Supervisors simply allocated $15,000 out of the general fund to the county fair . . . " Thus, the $15,000 was a gift of public funds in contra-

vention of the state constitutional bar to making gifts of public money. (Excerpt, Art. XVI, sec. 6, on p. 25.)

GOV. CODE SECTION 29302 IRRELEVANT

Respondents have "relied" upon Government Code section 29302 as providing authority for making a contribution to association and its fair. This section has no applicability to case under review. (See p. 27 for full text.)

Section 29302 presupposes the existence of a special fund authorized by some other statute. It presupposes the levying of a special tax authorized by other statute. It presupposes the setting of a tax rate for the special fund. It permits the tax rate for the special fund to be added to the tax rate for the general fund. It does not authorize the expenditure of funds for any purpose.

Only when the special tax rate has been fixed and added to the general fund tax rate, the special tax levied and the special fund created can officers avail themselves of the accountancy convenience provided by 29302.

Since the special tax authorized only by 25904 was not levied, no fund for fair purposes was ever created. Consequently, there was no money in the general fund that could lawfully have been appropriated for fair purposes.

GROUNDS NOT PREVIOUSLY PRESENTED

Petitioner now sets down three substantial grounds for issuance of writ not previously presented. These effectively negate arguments of appellate court in support of its decision:

1. The official County publication of tax rate for all purposes for 1971-72 shows no rate for any fair-related purpose. This is conclusive evidence that no special tax was levied for "county fair" (14th Dist. Ag. Assoc. fair) in that year. Hence, Gov. Code sec. 29302 could not have come into play.

2. Petitioner has a specimen of the agreement form signed by Council on Environment in arranging for its co-called "environmental exhibit" at the 1971 Ag. Assoc. fair. This form is titled "Agreement for Exhibit Space" and effectively vitiates the Court of Appeal's conclusion that Council was in the position of contractor hired by Association to perform work for fair or Association.

3. Neither respondents nor the courts would be able to show that Council actually staged an exhibit at the fair. On knowledge, documentary evidence, information and belief petitioner declares that Council spent the $2,000 allocated to it in renting a tent, which was set up on fairgrounds, and then allowed perhaps 12 organizations to use space in the tent during the fair. The only exhibit in the tent having to do with environment or ecology was that of "Fish Forever," a display showing how old auto tires could be sunk into the ocean to provide protection and hatching grounds for fish. The ad hoc group staging this exhibit had no formal connection with Council, but was a beneficiary of Council's largess. Neither it nor Council were entitled to receive "25904 funds" (even had there been such funds).

Respectfully submitted,

Theodore E. Schulz

Theodore E. Schulz
Petitioner pro se

CERTIFICATE OF GOOD FAITH

Theodore E. Schulz, petitioner pro se herein, hereby declares that foregoing petition for rehearing is presented in good faith and not for purpose of delay, and that the petition is restricted to the grounds specified in Rule 58, 2. Signed under penalty of perjury at Aptos, CA., this 11th day of November, 1975.

Theodore E. Schulz

Theodore E. Schulz

AFFIDAVIT OF SERVICE

This is to certify that on Nov. 11, 1975, one (1) copy of foregoing petition for rehearing was served on attorney of record for respondents pursuant to Rule 33(1) and (3c) by depositing same in the United States mail, first class postage prepaid, addressed to:

Mr. Dwight L. Herr,
Counsel for Respondents
701 Ocean Street
Santa Cruz, CA 95060

Signed under penalty of perjury at Aptos, CA, this 11th day of November, 1975.

Theodore E. Schulz

Theodore E. Schulz